

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Bridger	Team: Team # 1	CCRB Case #: 9905598	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 12/27/1999 3:15 AM	Location of Incident: Roosevelt Avenue and 92 Street	Precinct: 115	18 Mo. SOL 6/27/2001	EO SOL 6/27/2001	
Date/Time CV Reported Mon, 12/27/1999 3:45 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Mon, 12/27/1999 11:51 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Daniel Miller	27429	919418	
2. POM Timothy Erwig	29677	919006	
3. POM Sean Downes	29467	918975	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jason Angevine	31582	921123	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Daniel Miller	Abuse: PO Daniel Miller did not provide name and shield number.	
B.POM Timothy Erwig	Abuse: PO Timothy Erwig stopped and searched § 87(2)(b)	
C.POM Timothy Erwig	Abuse: PO Timothy Erwig did not provide name and shield number.	
D.POM Sean Downes	Abuse: PO Sean Downes stopped and searched § 87(2)(b)	
E.POM Sean Downes	Abuse: PO Sean Downes did not provide name and shield number.	
F.POM Daniel Miller	Abuse: PO Daniel Miller stopped and searched § 87(2)(b)	

Synopsis

The complainant, § 87(2)(b) alleges that while she and a friend, § 87(2)(b) went into a restaurant to pick up food, police officers ordered another friend, § 87(2)(b) out of § 87(2)(b)'s car and searched him. § 87(2)(b) further alleged that the officers refused to identify themselves when she returned. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

§ 87(2)(b) filed a NYPD Civilian Complaint Report (enclosures 2A-2C) at the 115th Precinct at 3:45am on December 27, 1999 and reported the following complaint:

On December 27, 1999 at approximately 3:15am an officer she identified as PO Miller searched the automobile used by § 87(2)(b) and her two companions, § 87(2)(b) and § 87(2)(b). PO Miller instructed § 87(2)(b) to exit the car and conducted a search of his person by requesting him to lift articles of clothing. PO Miller was accompanied by two other officers, none of whom provided a reason or justification for their conduct or identified themselves as police officers. § 87(2)(b) asked PO Miller who he was, but he only stated that he was trying to protect their property. § 87(2)(b) again asked PO Miller who he was and he provided his name, but she had to continue asking to obtain his shield number. § 87(2)(b) and her companions immediately called an unspecified precinct to verify the name provided by PO Miller. § 87(2)(b) believed that this search was illegal and constituted harassment.

§ 87(2)(b) was contacted via telephone on January 13, 2000 and provided the following statement (see enclosure 4).

At approximately 3:00am on an unspecified date, § 87(2)(b) and her friends stopped at a restaurant in Queens. § 87(2)(b) could not recall the name of the restaurant or its location. As the car pulled up outside the restaurant, § 87(2)(b) noticed what she believed to be a group of undercover officers speaking to someone on the street. Some of the officers saw § 87(2)(b) and § 87(2)(b) exit the car and enter the restaurant. When they left the restaurant, § 87(2)(b) saw three large men surrounding § 87(2)(b). § 87(2)(b) thought the men were trying to rob her friend. One of the men, who § 87(2)(b) identified as PO Miller, turned to § 87(2)(b) and asked him his name and whether he owned the car. § 87(2)(b) did not know that PO Miller was a police officer, but presumed that he was based on his tone of voice. PO Miller continued asking questions even though he never offered any identification. PO Miller told § 87(2)(b) to be thankful that he was protecting their property. § 87(2)(b) asked PO Miller for his name, shield number, and command, all of which he provided except his shield number. § 87(2)(b) did not see the officers touch or search § 87(2)(b) but § 87(2)(b) later told her that the officers had ordered him out of the car and told him to lift up his shirt.

§ 87(2)(b) and her friends went immediately to the precinct to file a complaint.

§ 87(2)(b) was again contacted via telephone December 26, 2000, at which time she confirmed that PO Miller did provide his name, although the other officers refused to identify themselves (see enclosure 5).

Results of Investigation

Civilian Statements

§ 87(2)(b) was interviewed at the CCRB on March 3, 2000 at which time he provided the following statement (see enclosures 6A-6B).

On December 27, 1999 at approximately 3:15am, § 87(2)(b) and his two friends, § 87(2)(b) and § 87(2)(b) went to Casa Columbia, a restaurant in Queens. § 87(2)(b) parked his gold Lexus near the corner of Roosevelt Avenue and 92nd Street in Queens. § 87(2)(b) and § 87(2)(b) went into the restaurant to pick up some food while § 87(2)(b) waited in the back seat of § 87(2)(b)'s Lexus. On their way to the restaurant, § 87(2)(b) observed some men in plainclothes, who he assumed were police officers although he did not see any of them wearing police shields. The officers looked at § 87(2)(b) as he and § 87(2)(b) entered the restaurant.

§ 87(2)(b) and § 87(2)(b) left the restaurant after approximately fifteen minutes and saw the same plainclothes officers surrounding § 87(2)(b)'s vehicle. One of the officers—later identified as PO Daniel Miller—opened an unspecified car door and § 87(2)(b) exited the auto. The three officers huddled around § 87(2)(b) and put their hands into his pockets. § 87(2)(b) who does not speak much English, was quiet and compliant. When § 87(2)(b) arrived at the car, he asked the officers who they were and what the “hell” they were doing. The officers asked § 87(2)(b) whether he knew § 87(2)(b) but before he replied, § 87(2)(b) stated that he wanted the officers to identify themselves. The officers refused and continued to question § 87(2)(b) and his companions. Eventually, § 87(2)(b) told the officers that he was the driver and the registered owner of the car and that § 87(2)(b) was his cousin. PO Miller told § 87(2)(b) that § 87(2)(b) was in the Lexus for a long time and that the officers were suspicious because § 87(2)(b) was playing around in the front of the vehicle. PO Miller accused § 87(2)(b) of being a thief, but § 87(2)(b) explained that he had merely been waiting for § 87(2)(b) and § 87(2)(b) while they went to get food. PO Miller explained that he was protecting § 87(2)(b)'s property and that § 87(2)(b) should be grateful. § 87(2)(b) continued to ask the officers for their names, but they did not provide this information. They claimed to be police officers, but did not show any identification. At no time did the officers ask § 87(2)(b) or his friends for identification. The officers left in an unmarked vehicle, which § 87(2)(b) did not describe.

§ 87(2)(b) described the officer determined to be PO Miller as a white male, shorter than 5'8", medium build, with blond hair and light eyes. The other two officers were white males over six feet tall. The officers stated that they were from the 115th Precinct.

Several attempts were made to contact § 87(2)(b) to view photographic arrays of the officers involved in the incident, but he did not respond to these contacts and did not see the arrays as a result (see enclosures 15C-15D).

§ 87(2)(b) was contacted numerous times via telephone and mail, however he did not respond to these attempts at contact and consequently, was not interviewed in connection with this investigation. Additional attempts to obtain valid contact information for § 87(2)(b) from § 87(2)(b) and § 87(2)(b) were also unsuccessful (see enclosures 15A-15D).

Identification of Subject Officer(s)

At the time of filing her complaint, § 87(2)(b) identified the subject officer as “Officer Miller badge #27429) (see enclosure 2A). An NYPD Management Information Systems Division (MISD) print-out indicates that PO Miller ran a license plate check of § 87(2)(b)'s vehicle on the Mobile Data Terminal computer inside RMP 812 on December 27, 1999 at 2:56am (see

enclosure 12). The 115th Precinct roll call indicates that PO Miller was assigned to RMP 812 (see enclosure 11B), which was confirmed by handwritten additions to § 87(2)(b) NYPD Civilian Complaint Report showing that PO Miller was assigned to RMP 812 (see enclosures 2A). At the time of his interview, PO Miller confirmed his role in the encounter. Although none of the civilian witnesses viewed photographic arrays of the officers involved, § 87(2)(b) described PO Miller as shorter than 5'8", while the other two officers were over six feet tall. PO Miller is 5'6" (see enclosure 9C), while his two partners on the date in question, PO Timothy Erwig and PO Sean Downes, are 6'2" and 5'11" (see enclosures 8C and 10A respectively). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Officer Statements

PO Miller's memo book indicates that on December 27, 1999 he was assigned to anti-crime in the 115th Precinct (see enclosures 9A-9B). There is no indication of his partner(s) or vehicle. The memo book contains an entry indicating that PO Miller conducted a stop of a person at 3:05am at "87/R". The following entry notes a final disposition of 10-93 Q [non-crime report prepared – no arrest] at 3:10am and that a UF-250 was prepared (see enclosures 13, 14).

PO Miller was interviewed at the CCRB on May 10, 2000 and provided the following statement (see enclosures 9C-9D).

On December 27, 1999 PO Miller was assigned to anti-crime with PO Erwig. PO Miller could not recall if he worked with another officer as well. The officers drove an unmarked Chevy—either a Lumina or Caprice. PO Miller explained that an anti-crime officer conducts livery cab checks and looks for robbery patterns.

At approximately 3:05am, PO Miller observed a car, which he could not describe, running in a "high-crime area," a location he described as where cars are often stolen. PO Miller saw someone sitting in the back seat of the vehicle—later determined to be § 87(2)(b)—but no one in the front two seats. PO Miller "wanted to make sure everything was okay" so the officers pulled up behind the vehicle and ran the license plate number to see if it was stolen, which it was not. PO Miller and PO Erwig then exited the police vehicle with flashlights and with their shields displayed. PO Miller approached the driver's side while PO Erwig approached the passenger side of the car. PO Miller shined his flashlight into the car and looked at § 87(2)(b) whose pants were unzipped. § 87(2)(b) saw PO Miller and began to get out of the car. PO Miller did not knock on the window or otherwise instruct § 87(2)(b) to exit the vehicle. § 87(2)(b) zipped up his pants as soon as he got out of the car. PO Miller did not look in § 87(2)(b)'s jacket, but he may have "opened his jacket up a little bit to make sure he didn't have any bulges that could be a gun". PO Miller asked § 87(2)(b) for his name and what he was doing. § 87(2)(b) explained that he was waiting for his two friends who were inside the restaurant next door. According to PO Miller, § 87(2)(b) had a good command of the English language. PO Miller did not tell § 87(2)(b) to put his hands on the vehicle or his back against the car. After PO Miller was satisfied that § 87(2)(b) was not doing anything wrong, he asked him for identification, which § 87(2)(b) did not have.

As PO Miller prepared to leave, two people—later determined to be § 87(2)(b) and § 87(2)(b)—came out of a nearby restaurant and demanded to know what was going on and why the officers had searched § 87(2)(b). PO Miller replied that he had not searched § 87(2)(b) and was merely making sure everything was alright. § 87(2)(b) asked for PO Miller's name and shield number, which he provided, but § 87(2)(b) did not ask PO Erwig for his information. § 87(2)(b) stated that he was the owner of the car and the officers left the scene.

PO Erwig did not interact with any of the three civilians.

PO Erwig and PO Downes were interviewed at the CCRB on May 3, 2000 and May 17, 2000 respectively, but neither officer recalled this incident (see enclosures 8D and 10B respectively). PO Erwig did not have any memo book entries pertaining to this incident, although his partner and assignment for the December 27, 1999 tour were noted as PO Downes and RMP 812 (see enclosure 8B). PO Erwig did not recall whether he also worked with PO Miller on this date. PO Downes did not provide a copy of his memo book at the time of his interview, although he stated that he was partnered with both PO Erwig and PO Miller.

PO Jason Angevine, who was listed on the 115th Precinct roll call assigned to sector I with another PO Miller [same first initial, but different tax number as PO Daniel Miller] was interviewed at the CCRB on April 19, 2000, but he had no information concerning this incident (see enclosures 7D-7E).

Police Department Records

The 115th Precinct tour 1 roll call (enclosures 11A-11B) for December 27, 1999 indicates that PO Downes, PO Erwig, and PO Daniel Miller were assigned to anti-crime in RMP number 812.

A NYPD Management Information Systems Division (MISD) print-out indicates that PO Miller ran a license plate check of § 87(2)(b)'s vehicle on the Mobile Data Terminal computer inside RMP 812 on December 27, 1999 at 2:56am (see enclosure 12).

CCRB Histories

PO Erwig, PO Downes, and PO Miller have received four, four, and three complaints respectively in their three years of service (see enclosures 1A-1C).

Conclusions and Recommendations

§ 87(2)(g)

- A. Abuse of Authority: PO Daniel Miller stopped and searched § 87(2)(b) (PG 116-33)**
- B. Abuse of Authority: PO Timothy Erwig stopped and searched § 87(2)(b) (PG 116-33)**
- C. Abuse of Authority: PO Sean Downes stopped and searched § 87(2)(b) (PG 116-33)**

§ 87(2)(b) initially reported that PO Miller instructed § 87(2)(b) to exit § 87(2)(b)'s car and searched his person by instructing him to lift certain articles of clothing. However, when she was contacted via telephone, § 87(2)(b) reported that when she and § 87(2)(b) left the restaurant, § 87(2)(b) was already outside the vehicle and was surrounded by the three officers. § 87(2)(b) admitted that she did not actually see any of the officers touch or search § 87(2)(b) but that § 87(2)(b) told her what had happened afterwards. § 87(2)(g)

§ 87(2)(b) stated that he observed an officer later determined to be PO Miller open the car door and that § 87(2)(b) then got out of the automobile. According to § 87(2)(b) all

three officers then placed their hands into § 87(2)(b)'s pockets. § 87(2)(g)

According to PO Miller, he saw a man seated in the back seat of a vehicle parked in what he described as an area prone to auto theft. Although the license plate query in the MISD database did not reveal § 87(2)(b)'s vehicle to be stolen, PO Miller wanted to investigate the matter further. When PO Miller and his partner(s) approached the car, PO Miller claimed that § 87(2)(b)'s pants were unzipped. § 87(2)(g)

PO Miller reported that he did not knock on the car window, open the vehicle door, or otherwise instruct § 87(2)(b) to step out of the car. Instead, he reported that § 87(2)(b) got out of the car on his own volition upon seeing the officers outside the car. § 87(2)(g)

PO Miller further recalled that he did not instruct § 87(2)(b) to lift articles of clothing or search his person, but he may have peered inside § 87(2)(b)'s jacket to "make sure he didn't have any bulges that could be a gun" § 87(2)(g)

§ 87(2)(g) § 87(2)(b) filed her initial complaint only against PO Miller and reported that only he ordered § 87(2)(b) out of the vehicle and searched him. § 87(2)(b) only mentioned in her telephone statement that the other officers stood around § 87(2)(b) outside the vehicle. § 87(2)(b) implicated all three officers, § 87(2)(g) PO Miller reported that he was the only officer to interact with any of the civilians. Neither PO Erwig nor PO Downes recalled this incident.

D. Abuse of Authority: PO Daniel Miller did not provide his shield number (PG 104-01)

When she filed the complaint after the incident, § 87(2)(b) noted on the NYPD Civilian Complaint Report that PO Miller provided his name, but not his shield number. § 87(2)(b) reiterated this allegation in her January 11, 2000 telephone statement, when she reported that PO Miller provided his name and command, but not his shield number. § 87(2)(b) broadened this allegation somewhat in his interview, asserting that none of the officers, including PO Miller, ever identified themselves in any fashion. § 87(2)(g)

§ 87(2)(b) identified PO Miller in the first sentence of the "Details" section of the report as "Officer Miller badge #27439" and wrote both the officer's name and shield number in another section of the report. Although there are handwritten additions to this report identifying PO Miller's command (115) and RMP (812), PO Miller's shield number does not appear to have been added in this darker color ink. Even assuming that § 87(2)(b) was only provided with PO Miller's shield number upon arrival at the 115th Precinct station house, it seems that PO Miller provided at the very least his name and command, sufficient information to identify him as the subject of this complaint. It is therefore recommended that this allegation be unfounded.

E. Abuse of Authority: PO Timothy Erwig did not provide his name and shield number (PG 104-01)

F. Abuse of Authority: PO Sean Downes did not provide his name and shield number (PG 104-01)

§ 87(2)(b) wrote in her initial complaint that none of the officers accompanying PO Miller identified themselves as police officers or provided a justification for their conduct. She did not, however, indicate that she ever directly asked these officers for their name or shield number and that they refused to provide this information—either in her initial report or subsequent telephone statements. As mentioned above, § 87(2)(b) claimed that none of the officers ever identified themselves or produced a shield to verify § 87(2)(b)'s assumption that they were police officers.

§ 87(2)(g)
While neither PO Erwig nor PO Downes recalled the incident, PO Miller reported that he was the only officer to interact with the civilians. PO Miller did not remember working with PO Downes, but stated that PO Erwig was not asked to identify himself. § 87(2)(g)

Investigator: _____ Date: _____

Supervisor: _____ Date: _____

Reviewed by: _____ Date: _____

Reviewed by: _____ Date: _____

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